

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION**

Vincent Brown,

Plaintiff,

v.

Lt. Oscar Levels; Sgt. McColough;
Asst. Dental A. Ridgeway; Mr. McClurry;
Associate Senior Warden Kendall; Captain
Lloyd; C/O Friarson; C/O Carmen Jackson;
Captain McCullough; Mental Health Tech
Rosa Privitt; Mental Health Tech Mojo; and
Mental Health Ms. Fox

Defendants.

C/A No.: 5:19-cv-01539-RMG

ORDER

Before the Court is the Report and Recommendation (“R & R”) of the Magistrate Judge (Dkt. No. 77) recommending the Court deny Plaintiff’s motion for temporary restraining order. (Dkt. No. 34.) For the reasons set forth below, the Court adopts the R & R as the order of the Court to deny Plaintiff’s motion for temporary restraining order.

I. Background

Plaintiff, Vincent Brown, proceeding *pro se*, filed an action alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. The matter before the Court is Plaintiff’s motion for temporary restraining order, filed on August 30, 2019. (Dkt. No. 34.) On September 23, 2019, Plaintiff was transferred from Lee Correctional Institute to the Broad River Correctional Institute. (Dkt. No. 1-5 at 5.) (Dkt. No. 1-4 at 19.) Plaintiff’s motion alleges that Lieutenant Levels, Sergeant McColough, Assistant Dentist Ridgeway, and C.O. Officer McClurry retaliated against him. (Dkt. No. 34-1 at 1.) In addition, he contends that he has not been given shower time three times per

week; that he is eating cold food; he is not permitted to go to the law library; and he is denied outside recreation, mental health and medical services, and cleaning supplies. (*Id.*) Specifically Plaintiff requests the following relief:

“(1)Termination or resignation of Lieutenant Levels from SCDC, (2) Temporar[ily] restrain the named Defendants Sgt. McColough, Lieutenant Levels, and C.O. McClurry at least 90 to 120 days and (3) Court order the Plaintiff to be mentally screen[ed] [for a] diagnosis.” (Dkt. No. 34 at 3.)

The Magistrate Judge issued an R & R denying Plaintiff’s motion for temporary restraining order on September 25, 2019. (Dkt. No. 77.)

II. Legal Standard

A. Report and Recommendation

The Magistrate Judge makes only a recommendation to this Court that has no presumptive weight. The responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court must make a *de novo* determination of those portions of the R & R Plaintiff specifically objects. Fed. R. Civ. P. 72(b)(2). Where Plaintiff fails to file any specific objections, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted). “Moreover, in the absence of specific objections to the R & R, the Court need not give any explanation for adopting the recommendation.” *Wilson v. S.C. Dept of Corr.*, No. 9:14-CV-4365-RMG, 2015 WL 1124701, at *1 (D.S.C. Mar. 12, 2015). *See also Camby v. Davis*, 718 F.2d 198, 200 (4th Cir.1983). Plaintiff did not file objections in this case, and the R & R is reviewed for clear error.

B. Temporary Restraining Order

The substantive standard for granting either a temporary restraining order or a preliminary injunction is the same. *Dyke v. Staphen*, No. CV 6:18-402-TMC-KFM, 2018 WL 2144551, at *1 (D.S.C. Apr. 19, 2018). A preliminary injunction or a temporary restraining order is warranted when the movant demonstrates four factors: (1) the movant's likelihood of success on the merits, (2) whether the movant will face irreparable harm in the absence of preliminary relief, (3) whether the balance of equities favors preliminary relief, and (4) whether injunctive relief is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

III. Discussion


Upon a review of the R & R and the parties' arguments, the Court finds the Magistrate Judge ably addressed the issues and correctly concluded that Plaintiff's motion should be denied. Plaintiff does not demonstrate a likelihood of success on the merits. He alleges that Lieutenant Levels has other actions pending in Greenville, South Carolina that demonstrate an aggression and bad temper toward inmates with mental health issues. (Dkt. No. 34 at 4.) Yet, these allegations are not sufficient to demonstrate a likelihood of success on the merits in the instant case. In addition, Plaintiff has not demonstrated irreparable harm. He indicates he is "repeatedly harassed, approached by inmates and staff in a violent manner, and tone [sic] threatening to inflict harm." (Dkt. No. 34 at 4.) Further he alleges that he has not been properly evaluated or classified as to his mental capacity. (*Id.*) Yet, these allegations are moot as to the Court's determination of the instant motion because Plaintiff indicates he was transferred to a different facility on September 23, 2019, three weeks after he filed the instant motion. (Dkt. No. 1-5 at 5.) (Dkt. No. 1-4 at 19.) The Court agrees with the R & R of the Magistrate Judge that Plaintiff has failed to demonstrate the balance of equities tip in his favor or that a temporary restraining order is within the public

interest. The primary purpose of injunctive relief is to preserve the status quo pending a resolution on the merits. *Wetzel v. Edwards*, 635 F.2d 283, 286 (4th Cir. 1980). The issuing of a temporary restraining order in this instance would change the status quo before the parties have an opportunity to litigate this case. Plaintiff's allegations do not demonstrate exigent circumstances exist that require the Court to issue a temporary restraining order.

IV. Conclusion

For the foregoing reasons, the Court **ADOPTS** the R & R of the Magistrate Judge (Dkt. No. 77.) as the order of the Court and **DENIES** Plaintiff's motion for temporary restraining order. (Dkt. No. 34.)

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

October 18, 2019
Charleston, South Carolina